



Risk Management Credit Guide

Architects & Engineers

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Introduction

Effective November 1, 2006, Victor's Risk Management Credit offers eligible insureds the option of receiving a deductible credit of up to \$25,000 if they implement certain "best practices" in the engagement and performance of professional services. The Risk Management Credit is designed to reduce the frequency and severity of claims, make claims more defensible and provide a mechanism to reward insureds for their risk management efforts.

Some firms will not be able to take advantage of the Risk Management Credit because the nature of their projects or services may not afford them an opportunity to implement the minimum number of the best practices required. The Risk Management Credit is most applicable to risk-intensive projects and services—those associated with project design and construction.

Background

The Risk Management Credit was developed to provide professional liability insurance that meets the ever-changing needs of design professionals. We recognize that some firms are taking progressive risk management steps, and Victor is looking to reward those firms accordingly. Victor also hopes that the Risk Management Credit will serve as an incentive for those firms who do not place risk management as high on their priority list as they should. Active steps in loss prevention will benefit the program overall.

The Risk Management Credit encourages the use of a set of best practices, long recommended throughout the design and construction industry. Receipt of the Risk Management Credit is predicated on the insured's documented satisfaction of a "baseline" condition—the timely execution of a written professional services agreement—plus any **three of five** best practices conditions. The policy language establishing these conditions, their rationale and appropriate documentation demonstrating compliance are described in detail on the following pages.

“Baseline” Condition: Written Agreement*

Policy Intent

We will reduce **your deductible** obligation for a **claim** by 50 per cent, up to \$25,000, if, within 60 days of the date of our request, **you** provide us with a copy of the written agreement that was executed by **you** and **your** client prior to **your** performance of the agreed-to **professional services** giving rise to the **claim** and **you** demonstrate, to our reasonable satisfaction, **your** compliance with any three of the following five conditions:

*The Risk Management Credit will not apply to any claim resulting from services rendered **prior** to the execution of a written agreement.*

Rationale

A written agreement is a fundamental risk management tool. Through a written agreement, the parties can state their goals and the expectations they have of each other and of third parties. They can allocate rights and responsibilities, risk and reward. Written agreements can also help parties deal with future changes. Even though it may not be possible to determine exactly what those changes might be, it is usually possible to establish a process and some procedures for dealing with change. Also, contracts can help prevent disputes and can establish a framework for the fair resolution of those that do occur.

Compliance Documentation

Appropriate compliance documentation consists of:

- A written agreement executed prior to the performance of the agreed-to services giving rise to the claim

Discussion

For a variety of reasons, design and other professionals sometimes decide to provide services prior to execution of a formal written agreement. In those cases, firms should keep a record of the arrangements they have made with the client. This can take the form of a commitment letter, sometimes referred to as a letter of intent. It is also advisable to include a time limit for the authorization contained in the commitment letter. That provides an incentive to negotiate and execute the formal agreement promptly. As indicated by the policy language above, the Risk Management Credit will not apply to any claim resulting from services rendered prior to the execution of a written agreement.

* The “baseline” condition plus **three of the five** conditions must be met in order to qualify for the Risk Management Credit.

Condition 1* [Subconditions 1A and 1B are *one* of the five conditions]

Subcondition 1A: Payment Terms/Invoicing

Policy Intent

*Your written agreement with **your** client specified payment terms, including a schedule of when payments were to be paid to **you**, which **you** consistently followed and enforced, or documented **your** attempts to do so.*

Rationale

Unclear or unspecified payment terms and untimely billing and collection of accounts commonly precipitate claims and counterclaims among contracting parties. By requiring clients to make timely payments for services rendered and by taking action to collect accounts when payments are overdue, insureds may have an opportunity to identify and cure problems or unmet expectations. Left unaddressed, such problems often result in claims.

Compliance Documentation

Appropriate compliance documentation consists of:

- An agreement executed prior to the performance of the agreed-to services giving rise to the claim (per the “baseline” condition) containing payment terms and a payment schedule
- Dated invoices or a spreadsheet reflecting dated invoices
- Dated unpaid balance reminders or other documents reflecting the insured’s attempt(s) to resolve payment problems, if any

Discussion

Generally, professional service firms extend credit to their clients from the time services are rendered until the time the service-related fees and expenses are collected. This aspect of any professional practice is fraught with risk. Firms that successfully manage this risk invariably do so by, first, checking the financial capability and payment practices of prospective clients before agreeing to perform services for the client. Second, they insist on written agreements with clear payment terms and conditions, including the right to suspend or terminate services for non-payment. Third, their billings are timely, accurate and consistent with applicable contract terms. Fourth, they actively communicate with their clients so there are no surprises to either party. Finally, when clients unreasonably refuse to make timely payments, the firm follows the applicable provisions of the contract.

Unclear or unspecified payment terms and untimely billing and collection of accounts commonly precipitate claims and counterclaims among contracting parties.

* The “baseline” condition plus **three of the five** conditions must be met in order to qualify for the Risk Management Credit.

Condition 1* [Subconditions 1A and 1B are *one* of the five conditions]

Subcondition 1B: Agreements With Other Professionals

Policy Intent

Prior to the performance of the agreed-to **professional services** giving rise to the **claim**, **you** executed a separate written agreement with and obtained certificates of insurance evidencing both Professional Liability and General Liability from each architect, engineer, landscape architect, land surveyor, contractor, project manager or construction manager **you** engaged or who engaged **you**.

Rationale

Agreements with other professionals are often oral, not written. Putting pen to paper encourages the parties to address and memorialize the complete terms of their agreement. It also helps the parties avoid uncoordinated contracts and mismatched expectations. Insurance certificates help demonstrate and confirm financial responsibility and compliance with applicable contract terms.

Compliance Documentation

Appropriate compliance documentation consists of:

- Agreements with other professionals executed prior to the performance of the agreed-to services giving rise to the claim
- Certificate(s) of insurance evidencing Professional Liability and General Liability coverages or a spreadsheet reflecting all such certificate information obtained prior to the performance of the agreed-to services giving rise to the claim

Discussion

Agreements with other professionals or subcontract agreements should describe in detail the duties and responsibilities of the prime professional and the consultants. Virtually all design and construction projects involve multiple contracts—design and construction, prime, and sub—so they should be tailored to avoid conflict and ambiguity.

Putting pen to paper encourages the parties to address and memorialize the complete terms of their agreement.

From a professional liability risk management perspective, in addition to a written agreement, it is important to obtain certificates of insurance evidencing both Professional Liability and General Liability coverage.

* The “baseline” condition plus **three of the five** conditions must be met in order to qualify for the Risk Management Credit.

Condition 2: Pre-project Planning*

Policy Intent

*You engaged with **your** client in a structured and regularly documented, pre-project planning process that produced a project definition document or package that substantially addressed the following project parameters (only “a” through “c” are required to satisfy this condition for study-and-report-only contracts):*

- a. *Project objectives (e.g., business, economic, aesthetic, other)*
- b. *Project constraints (e.g., budget, schedule, regulatory, other)*
- c. *Bases for the design/investigation (e.g., site data/requirements, utilities data/requirements, facility programming/requirements, equipment/technology requirements, alternatives to be considered)*
- d. *Project execution approach (e.g., staging, procurement strategy, delivery method, other)*
- e. *Project monitoring and control procedures (e.g., quality, cost, schedule, other)*

Rationale

Claims experience has clearly demonstrated the benefits of pre-project planning. These include better definitions of risks, increased predictability of cost and schedule, better achievement of business goals, improved operational performance, and fewer changes and disputes.

Both the RAIC and ACEC have long attempted to address the need to define the project and its environment.

Compliance Documentation

Appropriate compliance documentation consists of:

- Project definition document(s) addressing the applicable parameters (“a” through “c” for studies or otherwise “a” through “e”)
- Agreements annotated to address the applicable project definition parameters
- Reports prepared as deliverables addressing the applicable project definition parameters

Discussion

Both the Royal Architectural Institute of Canada (RAIC) and the Association of Consulting Engineering Companies of Canada (ACEC) have long attempted to address the need to define the project and its environment by including provisions in their standard client-design professional contract forms that require the client to provide “full information” (i.e., a program, schedule, budget, survey, geotechnical report, or other necessary information) before proceeding. In addition, under the RAIC and ACEC documents, the design professional should respond to the initial information provided and advise the client of apparent conflicts, or the need for additional information or consultant services. Condition 2 supports the fulfillment of these requirements.

* The “baseline” condition plus **three of the five** conditions must be met in order to qualify for the Risk Management Credit.

Condition 3: Internal/External Peer Review*

Policy Intent

Prior to delivery to **your** client of the instruments or deliverables of **your professional services**, a documented, independent peer review was completed, internally or externally, by a qualified professional to assess the likelihood that such instruments or deliverables would satisfy **your** client's objectives and would be in conformance with good professional practice.

By definition, an "independent" review cannot be conducted by the person technically responsible for the services or documents being reviewed.

Rationale

One of the best ways to minimize client dissatisfaction, anticipate problems and control the quality of design documentation is through investing in a documented internal or external peer review. By definition, an "independent" review cannot be conducted by the person technically responsible for the services or documents being reviewed.

Compliance Documentation

Appropriate compliance documentation consists of:

- Documents reflecting peer review activities, such as meeting minutes, memoranda, reports, completed checklists and notations on design documents (at the conceptual/schematic and final design phases)
- For external peer reviews, a peer review agreement or engagement letter and documents evidencing the completion of any such external peer review

Discussion

While external peer reviews initiated by engineering firms have become more common in recent years, internal peer or quality assurance reviews have long been a mainstay in firms committed to the delivery of services that satisfy client requirements and protect the public health, safety and welfare. Whether internal or external, the factors that are critical to the success of a peer review include the following:

- The reviewer's qualifications in terms of education, training and experience should be appropriate to the design or other deliverable being reviewed, and the reviewer should have some degree of independence from the person who initially prepared the deliverable.
- The scope of the review should be clearly defined, and review activities addressing that scope should be carried out in a systematic, logical process. Ideally, the review should occur throughout the design process.
- For an external peer review to qualify, it must have been performed within the last five years.

At a minimum, reviews should be carried out at the conceptual/schematic phase and final design phase of a project. Also, while checklists are not a substitute for experience, they can assist in minimizing oversights. Finally, review comments, responses and the agreed-to resolution of identified issues should be clearly documented.

* The "baseline" condition plus **three of the five** conditions must be met in order to qualify for the Risk Management Credit.

Condition 4: Constructability Review of the Project*

Policy Intent

*You engaged with representatives of the project owner, entities responsible for construction and any other project stakeholders **you** deemed appropriate in a structured and regularly documented constructability review process that provided for the timely integration of construction input into project planning, design and field operations.*

Rationale

Research by the construction industry demonstrates that incorporating construction knowledge and experience into the planning and design of a project can reduce costs and schedule time and improve the safety of field operations.

Compliance Documentation

Appropriate compliance documentation consists of:

- Documents reflecting participation in constructability review activities by representatives of the client and the design and construction teams, such as meeting minutes, memoranda, reports and notations on design documents, during the pre-construction phase of the project or applicable portion of the project

Discussion

For the purposes of this condition, “entities responsible for construction” shall include contractors, construction managers or construction consultants engaged by or on behalf of the client to advise on the constructability of the subject project. The key to maximizing the value of the constructability review process, however, is to understand and respond to the fact that the most important constructability input often comes from trade contractors and suppliers—the people who build the project. And because opportunities to influence cost, schedule and quality diminish during the course of design, trade contractor and supplier input is most effective when it occurs early in the planning and design process. Regrettably, low bid procurement strategies work at cross-purposes to timely constructability input.

*Incorporating **construction** knowledge and experience into the planning and design of a project can reduce costs and schedule time and improve the safety of field operations.*

* The “baseline” condition plus **three of the five** conditions must be met in order to qualify for the Risk Management Credit.

Condition 5: Management System for Project Documents*

Policy Intent

*You maintained a regularly documented construction phase submittal log indicating the as-planned and actual dates **you** received and responded to every submittal and the action taken.*

*A **submittal log** that tracks as-planned and actual submittal dates is a powerful project management tool.*

Rationale

A submittal log that tracks as-planned and actual submittal dates is a powerful project management tool that can be used to mitigate the insured's exposure to contractor delay damage claims. It also forces the contractor to submit a submittal schedule, co-ordinated with the contractor's construction schedule, for the design professional's approval.

Compliance Documentation

Appropriate compliance documentation consists of:

- A regularly documented submittal log or spreadsheet reflecting as-planned and actual receipt and response dates and actions taken

Discussion

Experience demonstrates that a well-defined submittal process that allocates responsibilities to the appropriate parties is vital to a successful project. Claims resulting from project delays and faulty construction are the alternative. It is widely accepted that the contractor should, as part of their tender, provide a submittal schedule. Since part of this schedule affects the services of the design professional, the contract requires the design professional to approve this schedule, in contrast to the construction schedule, which the design professional merely reviews. The submittal schedule should be prepared in conjunction with the construction schedule so that submittals are made in logical sequence and in a timely manner so they can be reviewed and approved when called for by the construction schedule.

Contractors often claim that they cannot provide the required submittal schedule because they have not yet "bought out" the job. That is an unfounded argument. The contractor has contractually committed to provide co-ordination and superintendence of all of the work. If the contractor can contractually commit to a completion date for the project and furnish a construction schedule for the project reflecting that completion date, it is clear that the contractor can and should provide allowances for submittal review and approval in that construction schedule — notwithstanding that the contractor may not have executed purchase orders or contracts for all labour, materials and equipment necessary to complete the work.

*Experience demonstrates that a well-defined **submittal process** that allocates responsibilities to the appropriate parties is vital to a successful project.*

* The "baseline" condition plus **three of the five** conditions must be met in order to qualify for the Risk Management Credit.

Insured Eligibility

Insured participation in the Risk Management Credit is optional, with no underwriting penalties for not participating.

The Risk Management Credit is outlined in the definition of Deductible in your policy as follows:

YOUR DEDUCTIBLE obligation, as indicated in Item 5 of the Declarations, is reduced by fifty per cent (50%) up to \$25,000 for any CLAIM where, within sixty (60) days of the INSURER'S request, YOU provide the INSURANCE MANAGER with a copy of the written agreement that was executed by YOU and YOUR client prior to YOUR performance of the agreed-to PROFESSIONAL SERVICES giving rise to such CLAIM, and YOU demonstrate, to the INSURANCE MANAGER'S reasonable satisfaction, YOUR compliance with any three (3) of the following five (5) conditions:

- a. *YOU must show evidence of payment terms/invoicing with YOUR client, as well as agreements with other professionals;*
- b. *YOU must show evidence of pre-project planning;*
- c. *YOU must show evidence of external/internal peer review;*
- d. *YOU must show evidence of constructability review of the project;*
- e. *YOU must show evidence of a management system for the project documents.*

The maximum reduction applicable to YOUR DEDUCTIBLE obligation, as indicated in Item 5 of the Declarations, will not exceed fifty per cent (50%) or \$25,000 for any CLAIM.

Administration of the Risk Management Credit

If there is a claim against an insured, the insured has an obligation to notify Victor promptly and in accordance with the provisions described under Part IV—General Conditions of the policy, titled, “Your Duties in the Event of a Claim.”

Following an insured’s written notice of a claim, Victor will confirm that a claim file has been opened and will ask whether the insured intends to apply for the Risk Management Credit. If the insured advises Victor that they intend to do so, Victor will request that the insured complete the “Application for Risk Management Credit” and submit the application and the following documentation to Victor, within 60 days:

- A copy of the written agreement that was executed by the insured and client prior to the performance of the agreed-to professional services giving rise to the claim
- Documentation demonstrating, to Victor’s reasonable satisfaction, that the insured had implemented **three of the five** best practices conditions described under this guide

The descriptions of “appropriate compliance documentation” are meant to assist insureds in implementing best practices and in demonstrating their compliance with the Risk Management Credit conditions. From an evaluation standpoint, the substantive content of the documentation, rather than its specific form, will determine compliance. However, the documentation should be well organized and clearly keyed to each applicable Risk Management Credit condition.

*If there is a claim against an insured, the insured has an **obligation** to notify Victor promptly.*

Compliance Document Checklist

The following checklist includes the submittals in each category. Once the “baseline” condition of a written agreement is met, **three of the five** conditions need to be included in the application for the Risk Management Credit. The application is available from Victor’s Claims department.

☐ **“Baseline” Condition (Written Agreement)**

Documentation submitted:

- › A written agreement executed prior to the performance of the agreed-to services giving rise to the claim

☐ **Condition 1** (Subconditions 1A and 1B are **one** of the five conditions)

1A (Payment Terms/Invoicing)

Documentation submitted:

- › An agreement executed prior to the performance of the agreed-to services giving rise to the claim (per the “baseline” condition) containing payment terms and a payment schedule
- › Dated invoices or a spreadsheet reflecting dated invoices
- › Dated unpaid balance reminders or other documents reflecting the insured’s attempt(s) to resolve payment problems, if any

☐ **Condition 1** (Subconditions 1A and 1B are **one** of the five conditions)

1B (Agreements With Other Professionals)

Documentation submitted:

- › Agreements with other professionals executed prior to the performance of the agreed-to services giving rise to the claim
- › Certificate(s) of insurance evidencing Professional Liability and General Liability coverages or a spreadsheet reflecting all such certificate information obtained prior to the performance of the agreed-to services giving rise to the claim

☐ **Condition 2 (Pre-project Planning)**

Documentation submitted:

- › Project definition document(s) addressing the applicable parameters (“a” through “c” for studies or otherwise “a” through “e”)
- › Agreements annotated to address the applicable project definition parameters
- › Reports prepared as deliverables addressing the applicable project definition parameters

☐ **Condition 3 (Internal/External Peer Review)**

Documentation submitted:

- › Documents reflecting peer review activities, such as meeting minutes, memoranda, reports, completed checklists and notations on design documents (at the conceptual/schematic and final design phases)
- › For external peer reviews, a peer review agreement or engagement letter and documents evidencing the completion of any such external peer review

☐ **Condition 4 (Constructability Review of the Project)**

Documentation submitted:

- › Documents reflecting participation in constructability review activities by representatives of the client and the design and construction teams, such as meeting minutes, memoranda, reports and notations on design documents, during the pre-construction phase of the project or applicable portion of the project

☐ **Condition 5 (Management System for Project Documents)**

Documentation submitted:

- › A regularly documented submittal log or spreadsheet reflecting as-planned and actual receipt and response dates and actions taken

Summary

Since 1969, Victor has offered seminars on loss prevention and risk management in major cities across Canada, and in most recent years in the form of webcasts.

Our Risk Management Credit program offers tangible savings to firms who practice risk management.

Victor hopes this program will help reduce claims against engineers and architects and benefit insured firms, and ultimately lower insurance premiums.

To obtain additional information concerning Victor's Risk Management Credit or to obtain other information about Victor's professional liability insurance program, call (toll free): **1-800-267-6684** or visit our website at: **www.victorinsurance.ca**.

As a leading managing general agent in Canada, Victor Insurance Managers Inc. develops and administers insurance programs and distributes them through a nationwide network of independent plan advisors and brokers to individuals, professionals, organizations and employers.

This guide is for illustrative purposes only, and is not a contract. Please remember that only the insurance policy can give actual terms, coverage, amounts, conditions and exclusions. Program availability and coverage are subject to individual underwriting criteria.

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